

**WAUKESHA COUNTY BOARD OF ADJUSTMENT  
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, March 14, 2012, at 6:30 p.m. in Room AC 255/259 of the Waukesha County Administration Center, 515 W. Moreland Blvd., Waukesha County, Wisconsin, 53188.

**BOARD MEMBERS PRESENT:** Robert Bartholomew  
Tom Day  
Nancy Bonniwell  
Richard Bayer  
Rob Schuett

**BOARD MEMBERS ABSENT:** Walter Schmidt

**SECRETARY TO THE BOARD:** Nancy M. Bonniwell

**OTHERS PRESENT** Town of Merton Board of Adjustment  
Sheri Lieftring, Senior Land Use Specialist  
Kathy Rosenheimer, BA12:007, owner  
Kathy Gutenkunst, BA12:007, attorney  
Dexter Runyard, BA12:008, son of owner  
Kevin Yanny, BA12:006, County DPW representative  
Jason Weiselman, BA12:006, owner  
Christine Herden, BA12:006, neighbor

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use and a taped copy is available, at cost, upon request.

**SUMMARIES OF PREVIOUS MEETINGS:**

Mr. Day *I make a motion to approve the Summary of the Meeting of February 8, 2012.*

The motion was seconded by Mr. Schuett and carried unanimously.

**NEW BUSINESS:**

**BA12:006 JASON WIESELMAN:**

Mr. Day *I make a motion to approve the request, in accordance with the Staff's recommendation, as stated in the Staff Report and for the reasons stated in the Staff Report, with the following addition to the reasons:*

*The house was built 75-80 years ago before the Ordinance regarding road setback requirements was enacted.*

The motion was seconded by Ms. Bonniwell and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **approval** of the request for variances from the road setback and remodeling a non-conforming structure in excess of 50% of its fair market value requirements of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit additions to and remodeling of the residence, subject to the following conditions:

1. The proposed front porch addition must be at least 33 ft. from the edge of the 40-foot right-of-way of Spence Road, as measured to the outer edges of the walls, with overhangs not to exceed two (2) ft. in width. The proposed second story addition over the garage shall remain within the footprint of the existing structure, with overhangs not to exceed two (2) ft. in width.
2. The residence shall not be used as a multiple-family residence nor shall any part of the structure be used as an in-law suite or separate living unit without obtaining all necessary permits and approvals from the Town of Merton and the Waukesha County Department of Parks and Land Use.
3. Prior to the issuance of a Zoning Permit, two (2) complete sets of final construction plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval. The final construction plan must be in substantial conformance with the preliminary plans submitted with the application (attached Exhibit "B").
4. Prior to the issuance of a Zoning Permit, six (6) copies of a Plat of Survey showing all existing and proposed structures, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
5. Prior to the issuance of a Zoning Permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a Sanitary Permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. It would be unnecessarily burdensome not to grant some relief from the road setback requirements to permit the front porch to be relocated. As conditioned, the new front porch will be no closer to the road than the existing front porch, which will be removed. A

variance from the remodeling a non-conforming structure in excess of 50% of its fair market value provision of the Ordinance is justified because the existing residence is a substantial structure that is only slightly non-conforming to the road setback requirements that has been permitted to be extensively remodeled and expanded in the past. The extensive remodeling and expansion that has been done in the fairly recent past make it extremely unlikely that denial of the requested variance from the 50% limit on remodeling a non-conforming structure would result in the residence being removed and replaced with a new residence in a conforming location. Therefore, denial of this variance would serve no useful purpose and would be unnecessarily burdensome. As recommended, the proposed additions and remodeling provide a reasonable use of the property, is not unnecessarily burdensome, and will permit additions to the residence that will be well within the allowable floor area ratio and open space requirements, and not detrimental to the surrounding neighborhood or contrary to the public interest. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

**BA12:007 KATHLEEN AND BRUCE ROSENHEIMER:**

Ms. Bonniwell

*I make a motion to approve the request, in accordance with the Staff's recommendation, as stated in the Staff Report and for the reasons stated in the Staff Report, with the following additions:*

*Condition No. 3 shall be added to read: "Upon the issuance of a Zoning Permit for the proposed remodeling, the variances granted by the Waukesha County Board of Adjustment on May 26, 2004 (File No BA04:029), to permit the interior remodeling of and an addition to the existing residence shall be null and void."*

*The following language shall be added to the reasons: "In addition, due the topography of the lot and the lakes on both sides, the residence is currently in the most suitable location on the property."*

The motion was seconded by Mr. Bayer and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **approval** of the request for a variance from the remodeling a non-conforming structure in excess of 50% of its fair market value provision of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit interior remodeling of the structure, subject to the following conditions:

1. Prior to the issuance of a Zoning Permit, two complete sets of final construction plans must be submitted to Planning and Zoning Division staff for review and approval.
2. Prior to the issuance of a zoning permit, a detailed time and materials cost estimate done by the contractor must be submitted to Planning & Zoning Division staff.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. It would be unnecessarily burdensome not to grant relief from the 50% requirements to permit the proposed interior remodeling. The petitioner was granted a variance and special exception in 2004 in order to construct an addition to this residence. The current request is for an interior remodel only and is therefore less than what the Board previously approved. The existing residence is located within a private right-of-way due to an approved addition done in 1988. It is a substantial structure and except for its small encroachment into the easement is conforming to all other provisions of the Ordinance. Requiring the structure to be moved or rebuilt would be an unnecessary hardship. The proposal will not negatively impact the general desirability of the neighborhood or the natural resources in the area and will not have an impact on the easement. Therefore, the approval of this request, with the recommended conditions, is within the spirit and intent of the Ordinance.

**BA12:005 WAUKESHA COUNTY DEPARTMENT OF PUBLIC WORKS:**

Mr. Day

*I make a motion to approve the request, in accordance with the Staff's recommendation, as stated in the Staff Report and for the reasons stated in the Staff Report.*

The motion was seconded by Mr. Schuett and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **approval** of the request for variances from the floodplain compensatory storage requirements of the Waukesha County Shoreland and Floodland Protection Ordinance, in order to widen C.T.H. "E" to statutory road width standards, reconstruct a bridge and dam spillway structure, and remove an existing secondary spillway structure, subject to the conditions recommended below:

1. The Waukesha County Department of Public Works shall obtain all necessary Town, County, WDNR, and ACOE permits prior to commencing construction.
2. The Waukesha County Department of Public Works shall obtain a Floodplain Development Zoning Permit, which will require that a registered professional engineer, architect, or land surveyor, certify that the floodplain development will not impede drainage, reduce flood water storage capacity of the floodplain, result in an increased regional flood elevation, or obstruct flows.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The granting of a variance is justified since the project will not be contrary to the public interest, unique property conditions exist, and literal enforcement of the provisions will result in practical difficulty or unnecessary hardship. More specifically, reconstructing the bridge/dam spillway structure and widening the road to statutory width requirements is necessary in order to provide safe travel on C.T.H. “E”. Currently the highway is closed for safety reasons, requiring all highway traffic to be rerouted to a rural local road. Waukesha County does not own enough land along the road right-of-way in the immediate vicinity to compensate for the lost flood storage. In order to meet the compensatory storage provisions, the County would need to acquire additional lands upstream of the dam and create additional floodplain on property that is currently owned by others. In addition to affecting adjacent property owners’ land, such land is not conducive for compensatory flood storage due to topography and/or high groundwater conditions. Utilizing land owned by the Waukesha County Parks Division downstream of the dam would negate the purpose and intent of the County’s ownership, which is to preserve the land in a natural state and would be counter to the County Development Plan recommendations that call for preservation of wetlands and environmental corridor areas.

The project has no impact on the floodplain elevation as a result of the fill activities. In fact, the flood capacity provided with the new bridge/dam spillway structure will result in a lowered floodplain elevation upstream and downstream of the dam. As reconstructed, the highway will be safer for travel and the new bridge/dam spillway structure will be able to pass the regulated flood without compromising the integrity of the structure and the new structure will reduce the floodplain elevation. Therefore, the approval of the requested variance, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

**BA12:008 ALAN RUNYARD:**

Mr. Day

*I make a motion to approve the request, in accordance with the Staff’s recommendation, as stated in the Staff Report and for the reasons stated in the Staff Report, with the following changes and additions:*

*Condition No. 1 shall be amended to read: “The proposed grain bin shall be located a minimum of 36 feet from the traveled road, which is approximately 10 feet from the established right-of-way of Pennsylvania Street.”*

*The following language shall be added to the reasons: Approval of the request will allow for as much productive agricultural land to be preserved as possible, while also accommodating the existing grain drying system. In addition, by allowing a larger bin now, this will minimize the number of future bins/structures needed on the property.*

The motion was seconded by Mr. Schuett and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **approval** of the request for a variance from the road setback requirements of the Waukesha County Zoning Code, to permit the construction of an additional grain bin on the property, subject to the conditions below:

1. The proposed grain bin shall be located a minimum of 40 feet from the traveled road, which is approximately 14 feet from the established right-of-way of Pennsylvania Street.
2. The grain bin shall not exceed 60 feet in height. Prior to the issuance of a Zoning Permit, plans must be submitted which indicate that the bin will be in compliance with the height requirement.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. It would be unnecessarily burdensome not to grant relief from the road setback requirements to permit the construction of a grain bin on this property. The approval of this request, with the recommended conditions, will allow the owner to construct an additional grain bin in order to further agricultural operations on the property. It is reasonable to grant the variance requested due to the existing layout of the structures on the property. The owner has an existing cluster of grain bins in this area and the existing driveway layout makes location on the far side of the existing bins impractical. Although the bin will be located as close as 14 ft. from the edge of the right-of-way, the right-of-way in this area is large (66 ft.) and the road is not heavily traveled as there are very few residences along this road for several miles. This area of the Town is predominantly agricultural. The construction of the bin, as conditioned, will not have adverse impacts on any neighboring properties or safe use of the road. Therefore, the approval of this request, as conditioned, is within the purpose and intent of the Ordinance.

**OTHER ITEMS REQUIRING BOARD ACTION:** None.

**ADJOURNMENT:**

Mr. Day

*I make a motion to adjourn this meeting at 8:00 p.m.*

The motion was seconded by Mr. Schuett and carried unanimously.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Nancy M. Bonniwell".

Nancy M. Bonniwell  
Secretary, Board of Adjustment

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